



November 16, 2011

CFPB Mortgage Disclosure Team
Consumer Financial Protection Bureau
1500 Pennsylvania Ave., NW
(Attn: 1801 L Street)
Washington, DC 20220

Re: Know Before You Owe: It's closing time

Dear CFPB Mortgage Disclosure Team:

The American Financial Services Association (AFSA)¹ appreciates the opportunity to provide feedback on the two prototype designs developed by the CFPB Mortgage Disclosure Team, entitled "Ironwood" and "Hornbeam," for the Settlement Disclosure Form. We agree with the Consumer Financial Protection Bureau's (CFPB) goals to give borrowers a clear understanding of the final loan terms and costs in one place and to give lenders and settlement agents a well-organized form to make compliance easier.

In the CFPB's blog post, *Know Before You Owe: It's closing time*, the CFPB Mortgage Disclosure team asks for suggestions as to how the team can improve the proposed forms, if there are ways to make things clearer, and what the challenges are to implementing the proposed forms. AFSA's observations on the forms are detailed below.

General Comments on the "Ironwood" and "Hornbeam" Forms

AFSA prefers the Ironwood form to describe final loan terms and closing costs. We believe this form is clearer and easier for borrowers to read and understand. However, we still have some comments and suggestions on both forms.

First, we recommend that the final form clearly state the actual dollar amount of the first payment that will be due on the loan and the due date. The first payment due may include principal and interest, interim interest, escrow, mortgage insurance, and/or optional product premiums, and both the components and the total should be clear to the borrower. We believe this would be very helpful to

¹ AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. The association encourages and maintains ethical business practices and supports financial education for consumers of all ages.

borrowers. Neither form has a payment schedule as required by Regulation Z § 226.18(s), so we request that the CFPB Mortgage Disclosure Team use the authority granted to the Bureau under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to reconcile the regulation with the final form.

Second disclosures for the terms of the note, loan costs, escrow, and other rights and obligations are spread throughout both forms. Currently, rate-related disclosures are located on pages 1 and 4. Payment-related disclosures are located in two places on page 1, on page 3 (escrow payment breakdown), and page 5 (escrow payment). Loan term-related disclosures are located on pages 1 and 5. Cost-related disclosures are located on pages 1 through 5. Instead of spreading these disclosures out, related disclosures should be grouped together.

Third, we suggest that the CFPB use either the term “lender” or “creditor” consistently throughout the final form instead of switching between the terms. Consistency will provide more clarity for the borrower.

Lastly, neither proposed form is ideal for disclosing the terms of a purchase transaction since the forms blur the line between the lender’s terms and the terms of the sale of the property.

Page 1 of Both Forms

We have three recommendations for page 1 of both disclosure forms. First, we believe that there should be more space at the top of the final form. Currently, the spacing at the top of both forms is crowded and will not accommodate long fields. Second, the “Escrow Information for Taxes & Insurance” should allow for disclosure of partial escrow, e.g. insurance only. Third, the information disclosed under the heading “Cash to Close” should be clearer. In the manner in which this information is currently disclosed, it is not easy to determine what portion of the borrower’s total closing costs (\$8410.28) are used to calculate the settlement fees (\$4842.00). The amount actually includes all of the 800, 900, and 1000 section fees, including those that were already paid outside closing by the borrower.

Page 2 of Both Forms

AFSA suggests that the CFPB Mortgage Disclosure Team revise the top section of both forms in a few ways. The top section of the final form should have a heading that would encompass the information required by the National Mortgage Licensing System (NMLS). More space at the top of both forms is needed to accommodate long fields. Additionally, lenders should have the option to provide more general or servicing contact information rather than a loan officer’s e-mail and phone number, as borrowers may want that information.

There is no space on either of the proposed forms for any information about a broker. If the transaction is being made through a broker, AFSA believes that it may be helpful for the borrower to have the broker's NMLS identification number listed on the final form. Moreover, it is unclear if the disclosed loan officer listed on the proposed forms is employed by the broker or the lender. We note that in a brokered loan transaction, the lender is unlikely to have a loan officer who has had direct contact with the borrower. If the disclosed loan officer is meant to be the employee of the broker, the broker should be clearly identified. If the transaction is made through a broker, there should be a clear disclosure of who the originator/broker is and who the lender/creditor is.

We believe that the final form would be clearer if it included a heading, possibly, "Settlement Cost Summary."

Page 3 of Both Forms (the same except for the disclosure of "Paid Outside Closing" items)

Although AFSA believes that the Ironwood form is clearer and easier to follow, we think that the borrower may have difficulty determining and "seeing" what comprises the total settlement fees disclosed on pages 1 and 4 on either form. Whatever totals are disclosed in the summary disclosures should be easily referenced in the cost breakdown. A better approach would be to show the "Borrower Paid at Closing" and "Borrower Paid Outside Closing" information in side-by-side columns, then have a column for "Seller Paid at Closing," and "Lender Paid at Closing." Including subtotals by section would likely be helpful for the borrower as well.

It appears that Sections 800, 900, and 1000 now combine into a new category called "Settlement Fees." That new category should be indicated on the final form and a subtotal provided.

A subtotal for Section 1300, the "Initial Escrow Deposit," should be provided so that the total initial escrow deposit is easily tracked to the escrow disclosures on page 5. We believe, however, that a better approach would be to eliminate the per item with aggregate adjustment calculation, and simply disclose the total initial escrow account deposit with a reference to the "Initial Escrow Account Disclosure Statement." The aggregate adjustment was designed to allow a transition from the per item approach to the aggregate accounting approach, and it is not clear why the settlement statement continues to require a per item calculation when the Real Estate Settlement Procedures Act (RESPA) now requires that the initial escrow deposit be calculated only using the aggregate accounting method. A breakdown of the monthly escrow payment should then be provided with other escrow disclosures, either on page 1 or page 5. These changes should make it easier for the borrower to understand the escrow disclosures.

AFSA asks that the CFPB Mortgage Disclosure Team allow more room to disclose payees on some lines. One reason we prefer Ironwood to Hornbeam is that on page 3 of Hornbeam, there are too many columns, with the last three columns requiring identification of the parties who pay and receive the funds. There will not be enough space for the necessary information.

Finally, we note that the “Paid Outside Closing” subtotal has little utility for the borrower because it mixes items paid by the borrower and lender.

Page 4 of Both Forms (the same except for the disclosure of “Paid Outside Closing” items)

AFSA members prefer the way that the “Paid Outside Closing” items are disclosed on the Ironwood form. Although the Ironwood form is easier to read, we still believe some adjustments should be made. We suggest that the “Borrower Paid Closing” and “Borrower Paid Outside Closing” should be listed in side-by-side columns, then list the “Seller Paid at Closing,” then, “Lender Paid.”

In the tab “Limits on Increases,” we think it would be helpful for borrowers to be able to see subtotals for the items that cannot increase. We also think it would be helpful to show a credit to the borrower from the lender (possibly in the 200 section), if either increase limit is exceeded.

AFSA believes that the Adjustable Interest Rate (AIR) table contains good information, but would be more useful to the borrower if it was placed with the other loan term disclosures, either on page 1 or page 5.

Page 5 (Hornbeam) and Pages 5 – 6 (Ironwood)

We believe that the table format of the Ironwood form is easier for borrowers to read and understand than the narrative style of the Hornbeam form. Nonetheless, as the Settlement Disclosure Form is not a shopping document, information on these pages should be required only where relevant. For instance, it is not important for borrowers to be able to use the form to compare loans that do and do not have negative amortization. Thus, the negative amortization disclosures should be required only when the loan has a negative amortization feature. There are several disclosures that could be eliminated in this manner for most transactions, thus helping to make the important disclosures stand out.

The section on “Escrow Account Information” on both forms states that without an escrow account, the borrower must pay potentially large costs in semi-annual or annual payments. However, direct payments would not necessarily be semi-annual or annual. Insurance companies often have payment plans allowing monthly or quarterly payments. Some taxing jurisdictions may have such payment plans as well.

AFSA believes that the partial payment policy section should be removed or modified because the lender could change its policy on partial payments over time, depending on the servicer.

We have a few comments on the way the information is disclosed under the Loan Calculations tab. The “Closing Cost Summary” may be confusing to borrowers, as it is not easy to determine where the totals come from because they do not match the totals disclosed on the closing costs page. The fact that the “Total of Payments” includes escrow payments is not clearly disclosed on the Ironwood form, so the borrower may be unclear as to why the total amount is higher. We are also not sure why escrow payments would be included in this total, as those payment amounts are not directly related to the loan terms and are subject to change over time. Instead, the “Total of Payments” should be restricted to monthly principal and interest payments, or at least the final form should show a breakdown between total monthly principal and interest payments and total escrow payments to show how the “Total of Payments” is reached. On the Hornbeam form, the \$97,118.87 listed under “Total Payments” is said to go to interest and settlement charges. However, this is not accurate as the \$97,118.87 would include only interest and prepaid finance charges, and not all settlement charges are prepaid finance charges.

While the Dodd-Frank Act requires the disclosure of the “Total Interest Percentage” (TIP) and the “Lender Cost of Funds” (LCF) it is not clear how these numbers are calculated or how the borrower is benefited by this information. Thus, in the interest of providing the borrower with the most simple and clear settlement disclosure form, AFSA recommends that the CFPB use the exception authority granted to the Bureau by the Dodd-Frank Act to eliminate these disclosures.

In the “Originator Fees Summary” section, it is not clear who is meant by “originator.” The final form should specify whether the term “originator” refers to the lender or the broker. (This issue should also be addressed on pages 3 and 5.)

We have two comments on the information presented under the “Other Disclosures” tab. First, the statement under “Liability after Foreclosure” is state law dependent. The two options provided may not be accurate under every state’s law. And whether there is the possibility for personal liability after foreclosure may be fact dependent. If this disclosure is required, we propose that it be rewritten to provide for an awareness of possibilities, not be a definitive disclosure. Second, the statement under “Tax Deductions” may also be very fact dependent and the disclosure may not be accurate for every case. We propose that this disclosure be written to simply state that mortgage interest may not be tax deductible in all situations and the borrower should consult a tax advisor for more information.

Under the “Questions” tab, we request that the lender to permitted to provide more specific contact information. We believe that this would be convenient for the borrower.

AFSA believes that the statement under the “Confirm Receipt” tab may be confusing to the borrower and should be modified. Referring to the borrower as the applicant at this point could confuse the borrower, as could the statement that the loan does not have to be accepted because the Settlement Disclosure Form has been received or signed or the loan applied for. We understand that the purpose of this statement is to satisfy the Truth in Lending Act (TILA) disclosure requirement. However, the borrower will be receiving and signing this form at the same time that the borrower is signing the note and security instrument, and, unless there is a rescission right, the borrower *will* be accepting the loan. Including this statement as presented on this form could create confusion as to the borrower’s obligations.

Safe Harbor

Most of the information that is required by statute to be prominent in current disclosures (Annual Percentage Rate or APR, amount financed, finance charge) is relegated in the proposed forms to the last or second-to-last page of the forms. This change highlights the need for a safe harbor for lenders, as the disclosure of neither of the proposed forms comply with the statutory requirements of TILA (for example, the requirement in Section 122 of TILA that the disclosures for APR and finance charge be more prominent than other disclosures). Without a safe harbor, using either of the proposed forms to attempt to comply with TILA will cause the creditor to be exposed to potential damages for each and every transaction made using these forms.

Generally

AFSA recognizes the requirements of the Dodd-Frank Act to combine real estate secured disclosures, but currently, creditors typically provide the closing disclosures required by Regulation Z, and for purchase money transactions, closing agents typically prepare the HUD-1s. AFSA is concerned about the timing of closings, and the very likely possibility that if either of these disclosures is prepared by the creditor, changes made by the closing agent could cause additional delays in closing in order to re-disclose the entire form. There is also no disclosure of credit insurance premiums, which under Section 106 of TILA, must be disclosed in order to be excluded from the finance charge.

Conclusion

AFSA appreciates the CFPB Mortgage Disclosure Team's efforts to create a simple and clear Settlement Disclosure Form. We are grateful for the opportunity to participate in this process.

Please contact me by phone, 202-466-8616 ext. 616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,

A handwritten signature in black ink that reads "Bill Himpler". The signature is fluid and cursive, with the first name "Bill" being larger and more prominent than the last name "Himpler".

Bill Himpler
Executive Vice President
American Financial Services Association